

**Date: 20071003**

**Docket: A-634-05**

**Citation: 2007 FCA 314**

**CORAM: NADON J.A.  
SEXTON J.A.  
SHARLOW J.A.**

**BETWEEN:**

**ARTHUR ROMAN ZINS**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Toronto, Ontario, on October 3, 2007.

Judgment delivered from the Bench at Toronto, on October 3, 2007.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**SHARLOW J.A**

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**ARTHUR ROMAN ZINS**

**Appellant**

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**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at Toronto, Ontario, on October 3, 2007)

**SHARLOW J.A.**

[1] The appellant Arthur Zins was reassessed under the *Income Tax Act* for the 1998 taxation year to include in his income an amount representing his profit from a fraudulent scheme. In the same reassessment, a penalty was imposed under subsection 163(2) of the Act on the basis that Mr. Zins had knowingly failed to report that income. Mr. Zins' appeal to the Tax Court of Canada was allowed in part by Justice Miller, to reduce the income inclusion from \$98,360 to \$43,414 (2005 TCC 786). Mr. Zins' appeal in relation to the penalty was dismissed. Mr. Zins now appeals to this Court

[2] Part of Mr. Zins' appeal in this Court is based on the premise that Justice Miller erred in excluding certain evidence at trial. We have been unable to identify any error in this regard. We have disregarded the evidence included in the appeal book that was not admitted at trial. We have also disregarded evidence that Mr. Zins sought to rely on in the appeal that was never presented in the Tax Court.

[3] The principal argument of Mr. Zins relates to \$38,272 that was seized from him in 1998 and paid to certain charities in 2002 and 2003 as the result of a court order in 2002. Mr. Zins argues that the \$38,272 was not his income in 1998 because it did not belong to him. Alternatively, he argues he should be allowed a deduction in 1998 for that amount because it was taken from him in 1998. Justice Miller rejected both of those arguments. In our view, he was correct to do so.

[4] It was open to Justice Miller to conclude, as he did, that all of the money in issue was fraudulently obtained by Mr. Zins. Stolen or fraudulently obtained money is income in the hands of the person who steals it or fraudulently obtains it: *R. v. Poynton*, [1972] 3 O.R. 727, 29 D.L.R. (3d) 389, 9 C.C.C. (2d) 32, [1972] C.T.C. 411, 72 D.T.C. 6329 (Ont. C.A.). As for Mr. Zins' alternative argument, we agree with Justice Miller that in this case the restitution obligation did not arise in 1998 and therefore cannot form the basis of a deduction in 1998.

[5] Mr. Zins says that the money he obtained through his fraudulent scheme was kept in identifiable bank accounts and not spent, except for the expenses of the scheme. Assuming that

to be true, we are not persuaded that it detracts from the conclusion that the money was fraudulently obtained by Mr. Zins and therefore was taxable in his hands.

[6] Mr. Zins also takes issue with Justice Miller's factual conclusions relating to two specific amounts included in Mr. Zins' income, \$2,000 and \$720. Those conclusions must stand absent palpable and overriding error on the part of Justice Miller (*Housen v. Nikolaisen*, [2002] 2 S.C.R. 235). The record discloses no such error.

[7] Finally, Mr. Zins argues that the penalty was improperly imposed. Justice Miller rejected the appeal of Mr. Zins on that point because he had knowingly failed to report the income in question. That conclusion is correct in law and is amply supported by the evidence.

[8] This appeal will be dismissed with costs.

"K. Sharlow"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-634-05

**STYLE OF CAUSE:** ARTHUR ROMAN ZINS  
Appellant  
and  
ATTORNEY GENERAL OF CANADA  
Respondent

**DATE OF HEARING:** OCTOBER 3, 2007

**PLACE OF HEARING:** TORONTO, ONTARIO

**REASONS FOR JUDGMENT  
OF THE COURT BY:** (NADON, SEXTON, SHARLOW, JJ.A.)

**DELIVERED FROM THE  
BENCH BY:** SHARLOW J.A.

**APPEARANCES:**

ROMAN ZINS FOR THE APPELLANT/  
APPLICANT  
JOHN GRANT FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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